

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

SHELIA D. BARFIELD, ET AL.

CIVIL ACTION NO. 09-2012

VERSUS

JUDGE S. MAURICE HICKS, JR.

WYETH INC., ET AL.

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before the Court is plaintiffs' Motion for Leave to File Motion for Extension of Time to Effect Service (Record Document 77) and defendant Goldline Laboratories Inc.'s ("Goldline") Motion to Dismiss. (Record Document 80). Goldline's Motion to dismiss is based on the fact that service has not been properly executed. For the reasons that follow, Plaintiff's Motion for Leave is **GRANTED** and Goldline's Motion to Dismiss (Record Document 80) is **DISMISSED**.

The only issue raised by Goldline in its Motion to Dismiss is that, under Federal Rule of Civil Procedure 12(b)(5), plaintiffs' have failed to properly serve Goldline. (Record Document 80). Plaintiffs claim that they "mailed summons and complaint by certified mail on February 28, 2012 to Goldline." (Record Document 77-1 at 1). This is well after their January 11, 2012 deadline. Goldline asserts that since plaintiffs "make no statements whatsoever regarding any attempts to serve Goldline before their deadline," the matter should be dismissed. (Record Document 80-1 at 2).

"Under Rule 4(m), a district court is permitted to dismiss a case without prejudice if a defendant has not been served within 120 days after a complaint is filed." Newby v. Enron Corp., 284 Fed. Appx 146, 149 (5th Cir. 2008). "However, if a plaintiff can establish good

cause for failing to serve a defendant, the court must allow additional time for service. Moreover, even if good cause is lacking, the court has discretionary power to extend time for service.” See id.

Plaintiffs do not even attempt to put forth good cause for their delay in properly serving Goldline. However, as set out in Newby, the Court has discretion to extend the time for service. Therefore, for Court finds it is in the interests of justice to allow plaintiffs twenty-one (21) more days to properly serve Goldline in this matter. This Order does not preclude Goldline from raising any other issues in a Rule 12(b)(6) motion.

Accordingly,

IT IS ORDERED that plaintiffs’ Motion for Leave (Record Document 77) be and hereby is **GRANTED**. Plaintiffs have twenty-one (21) days from this order to provide the Court evidence of proper service on Goldline or the matter will be dismissed with prejudice.

IT IS FURTHER ORDERED that the Motion to Dismiss (Record Document 80) be and is hereby is **DENIED**.

THUS DONE AND SIGNED at Shreveport, Louisiana, on this 1st day of May, 2012.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE